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Court : Rajasthan

Decided On : Nov-22-1990

Reported in : 1990(2)WLN393

Judge : K.C. Agrawal and; B.R. Arora, JJ.

Appeal No. : D.B. Income Tax reference Case No. 9 of 1990

Appellant : The Commissioner of Income Tax

Respondent : Ganga Stone Traders

Judgement :

B.R. Arora, J.

1. The Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, at the instance of the Revenue, has referred the following question of law for the opinion of this Court:

Wthether on the facts and in the circumstances of the case, the Tribunal was right in holding that the aseessee was entitled to depreciation on trucks @ 40% as against 30% allowed by the Income fax Officer?

2. The assessee is engaged in the business of exploiting the mines and sale of stones. The assessee also owns trucks, which are used in carrying the stones from the miness to the godown of the assessee or to sale dopot of the assessee- For the assessment year 1984-85, the assessee claimed depreciation on the

trucks, which were used by it for its bueinss @ 40%. The Income Tax Officer, while completing the assessment, allowed the depreciation @ 30%, though the assessee claimed the same @ 40%. Dissatisfied with the order passed by the Income Tax Officer, the assessee preferred an appeal before the Appellate Assistant Commissioner of Income Tax, who allowed the appeal filed by the assessee and allowed depreciation @ 40%. Aggrieved with the order passed by the Appellate Assistant Commissioner of Income Tax, allowing the depreciation @ 40%, the Revenue preferred an appeal before the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, and the Tribunal, placing reliance over the judgments in the case of: Manjeet Stone Company, dismissed the appeal filed by the revenue. Aggrieved with the order passed by the Tribunal, the Revenue moved ah application Under Section 256(1) of the Act, requesting the Tribunal to refer the question mentioned in the application for the opinion of the High Court, which, according to the department, arises out of the order passed by the Tribunal. The Tribunal, by its order dated October 31, 1989, referred the question of law, mentioned in Para No. 1 above, for the opinion of the High Court.

3. The same question camp-up for consideration before us in D.B. Income Tax Reference Case No. 77/1985 (The Commissioner of Income Tax, Jaipur v. Manjeet Stone Company, Kota), which we have decided today, wherein, while answering the question in favour of the Revenue, we have held that as the truck has been used by the assessee in its business, therefore, the case of the assessee is covered by Entry No. III (ii) D-9 and not by Entry No. III (ii) E-(l-A) of part I of Appendix-1, appended to the Income Tax Rules, 1962,.and as such, the assessee is entitled for the depreciation @ 30% and not @ 40%.

4. For the reasons given in D.B. Income Tax Reference Case No. 77/1985 (The Commissioner of Income Tax, Jaipur v. Manjeet Stone Co., Kota), we are of the opinion that the assessee is entitled for depreciation @ 30% and not @ 40% on the trucks used by it for its business. The question referred is, therefore, answered in negative, i.e., in favour of the Revenue and against the assessee. No order as to costs.

5. Let the answer be returned to the Tribunal in accordance with Section 260(1) of the Income Tax Act.

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